

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220987

DATE: February 6, 1986

MATTER OF: Windet Hotel Corp.

DIGEST:

1. Bid of Canadian firm properly was found nonresponsive where the firm failed to submit the required endorsement from the Canadian Commercial Corporation and submitted its bid in Canadian rather than American dollars.
2. Cancellation of invitation for bids is proper where contracting officer determines that no responsive bid was received from a responsible bidder.

Windet Hotel Corp. protests the Army's decision to cancel that portion of invitation for bids (IFB) No. DAKF15-86-B-0002 which called for lodging, meals and transportation for male recruits at the Military Entrance Processing Station, Detroit, Michigan. The cancellation was based on a finding by the contracting officer that no responsive bids were received. The protester challenges the contracting officer's determination, arguing that it submitted the sole responsive bid. The protester also contends that the Army should complete the acquisition through negotiations with the protester. We deny the protest.

The IFB, issued on August 22, 1985, called for meals, lodging and transportation for male and female recruits in the Detroit area. The IFB required separate line item bids for male and female recruits for each service to be provided, and the Army reserved the right to accept any item or group of items in a bid. At bid opening on September 23, four bids were received for line item 0001, meals, lodging and transportation for male recruits. The contracting officer determined that all four bids were nonresponsive, however, and subsequently canceled the portion of the IFB relating to male recruits. The Army states that it plans to issue a new IFB for the requirement, but has refrained from doing so because of the pending protest.

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As a preliminary matter, we note that the protest was filed by Priscidon Enterprises, Inc. on behalf of Windet Hotel Corp. The Army argues that the protest should be dismissed because Priscidon is not a bidder under the IFB and therefore is not an interested party entitled to file a protest. See Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551(2), 3552 (West Supp. 1985); Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1985). We would agree if Priscidon had filed the protest on its own behalf, as was the case in Priscidon Enterprises, Inc., B-220278, Nov. 13, 1985, 85-2 CPD ¶ 549, the decision cited by the Army. The Army's argument is misplaced in this case, however, because Priscidon filed the protest as the representative of the protester, which, as a bidder under the IFB, is an interested party to challenge cancellation of the IFB. Id.

The protester first challenges the contracting officer's determination that its bid was nonresponsive. The contracting officer based his finding on the fact that the protester, a Canadian firm, (1) failed to submit the endorsement from the Canadian Commercial Corporation (CCC) required under the Department of Defense Supplement to the Federal Acquisition Regulation (DFAR), 48 C.F.R. § 225.7104 (1984); and (2) submitted its bid in Canadian rather than American dollars. We conclude that the contracting officer properly found the protester's bid nonresponsive.

The provision relied on by the contracting officer, DFAR, 48 C.F.R. § 225.7104, sets out procedures for purchases from Canadian firms. Under section 225.7104(b), contracts with Canadian firms generally are to be made with the CCC, which then in effect subcontracts performance of the contract to the specific firm. To indicate its approval of an offer by a Canadian firm, the CCC is to issue a letter confirming and endorsing the offer. DFAR, 48 C.F.R. § 225.7104(a)(2)(i). Here, the protester concedes that it did not submit the required endorsement from the CCC; the protester argues, however, that the DFAR requirement for contracting with the CCC, rather than directly with the Canadian firm, does not apply in this case because only firms located in Windsor, Ontario could satisfy the requirement in paragraph C.1.2 of the IFB that a bidder's facility be located within 30 minutes' driving time from Detroit. The protester also states that it received approval from the CCC for the contract to be awarded directly to the protester.

While the protester states that a letter from the CCC confirming its approval of a direct award to the protester was included with its bid, our examination of its bid

package shows only an addendum drawn up by the protester stating that the CCC had given its approval and providing the names of the individuals at the CCC to contact for further information; we found no letter from the CCC itself, as the protester contends. In any event, the protester's argument that CCC approval is not required is without merit. The only exceptions to the general requirement for contracting with the CCC are listed in DFAR, 48 C.F.R. § 225.7104(b)(2); none applies here.^{1/} Since the protester did not submit the required endorsement from the CCC, its bid properly was found nonresponsive. Ronald Campbell Co., B-190773, Apr. 17, 1978, 78-1 CPD ¶ 296.

The contracting officer also found the protester's bid nonresponsive because it was expressed in Canadian dollars. The protester contends that it was proper to bid in Canadian dollars, citing Federal Acquisition Regulation (FAR), 48 C.F.R. § 25.501(a), which permits bids in local currency for contracts entered into and performed outside the United States with local firms. We disagree. First, the contract at issue would not have been entered into outside the United States, since the contracting activity, whose acceptance of the bid would give rise to the contract, is located in the United States. See FAR, 48 C.F.R. § 14.407-1(c)(1), (5) (contract award results from acceptance of bid). Further, DFAR, 48 C.F.R. § 225.7104(a)(2)(iii), specifically provides that sealed bids from Canadian firms submitted through the CCC are to be in United States currency. Thus, there is no basis for the protester's contention that bidding in Canadian dollars was proper.

In view of our conclusion that the protester properly was found nonresponsive and the contracting officer's determination that there were no other responsive bids from

^{1/} The exceptions are: negotiated purchases for experimental, developmental, or research work; purchases of unusual or compelling urgency; small purchases; and purchases by U.S. defense activities located in Canada.

responsible bidders,^{2/} which has not been challenged, the cancellation of the IFB was proper. See FAR § 14.404-1(c)(6) (Federal Acquisition Circular (FAC) 84-5, Apr. 1, 1985). In addition, to the extent that the protester challenges the Army's plan to issue a new IFB rather than conduct a negotiated procurement, we find its argument without merit; there is no requirement that an acquisition under a canceled IFB be completed through negotiation with the same bidders, or that the new solicitation be issued on a negotiated basis. See FAR, §§ 14.404-1(e), 15.103 (FAC 84-5).

Finally, the protester contends that the IFB was canceled solely to permit another firm to bid on the new IFB; according to the protester, the firm could not submit a bid under the original IFB because it was undergoing renovation of its facility. The protester provides no support for this allegation and we see no basis for it in the record, particularly since the cancellation properly was based on the lack of a responsive bid from a responsible bidder.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel

^{2/} As noted above, the other three bidders were found nonresponsive also, one for failing to include transportation in its bid, and the remaining two because they did not disclose that they were affiliated, as required by the IFB. With regard to these two bidders, the contracting officer determined, after the protest was filed, that their failure to disclose the affiliation did not render the bids nonresponsive. Subsequently, one of these bidders withdrew its bid and the other was found nonresponsive. As a result, the contracting officer did not change his finding that no responsive bid from a responsible bidder was received.